No. 93-1883

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In The

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD in his capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

Petitioners, Eloise Anderson, successor in interest to John D. Healy, as Director of the California Department of Social Services, and Russell Gould, successor in interest to Thomas Hayes, as Director of the California Department of Finance, (hereinafter, "petitioners")

hereby respectfully submit their reply to respondents' brief in opposition to the Petition for Writ of Certiorari in this proceeding. Petitioners urge that the Court grant the petition in order to resolve the split of authority between the Court of Appeals for the Ninth and Second Circuits and the Massachusetts Supreme Court regarding the validity of a non-sibling filing unit rule in the AFDC program.

I

THE COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI IN ORDER TO SETTLE AN IMPORTANT QUESTION OF FEDERAL LAW AND TO PROMOTE UNIFORMITY AMONG THE STATES REGARDING THE VALIDITY OF NON-SIBLING FILING UNIT RULES

Respondents in their opposition contend that the Petition for Writ of Certiorari should be denied as it presents no important question of federal law, and that uniform application of the law is of no overriding concern. (Opposition, hereinafter "Opp.," 7, 18.) Respondents are wrong in their contention. The question presented by the petition goes to the heart of the state's discretion under the AFDC program: May a state compose AFDC assistance units so that a needy caretaker relative and all needy children, siblings and non-siblings, who live in the same household, are in the same assistance unit.

The scope of a state's discretionary authority in providing welfare assistance to its citizenry is indeed an important federal question which has repeatedly been addressed by this Court. *Dandridge v. Williams*, 397 U.S. 471, 478 (1970); *King v. Smith*, 392 U.S. 309, 318-319 (1968).

Moreover, the necessity of uniformity in the application of law dictates there be only one correct conclusion of law regarding the non-sibling filing unit rule: either it is valid, as the Second Circuit and the Massachusetts State Supreme Court have held in the cases of *Bray v. Dowling*, 25 F.3d 135 (2d Cir. 1994) 1994 U.S. App. LEXIS 13021, and *MacInnes v. Commissioner of Pub. Welfare*, 412 Mass. 790, 593 N.E.2d 222 (1992), or it is not, as the Ninth Circuit has held in this case, *Edwards v. Healy*, 12 F.3d 154 (9th Cir. 1993) and in the case of *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990). The substantive disparity in the decisions of the Ninth and Second Circuits and the Supreme Court of the State of Massachusetts must be resolved and settled by this Court.

II

THE NINTH CIRCUIT MISAPPLIED FEDERAL AFDC LAW IN STRIKING DOWN WASHINGTON'S AND CALIFORNIA'S NON-SIBLING FILING UNIT RULES, AND THIS COURT SHOULD GRANT THE PETITION TO CORRECT THAT ERROR

In their opposition respondents allege that the Ninth Circuit's decisions in *Beaton* and *Edwards* do not conflict with this Court's decision in *Bowen v. Gilliard*, 483 U.S. 587 (1987). (Opp. 5.) Respondents are wrong. *Beaton* and *Edwards* are directly contradictory not only to *Bowen v. Gilliard* but also to numerous other decisions of this Court, as well as decisions of the United States Court of Appeals.

Respondents concede that the state has considerable discretionary authority or "flexibility" to define the AFDC assistance unit. (Opp. 14.) Respondents also concede that the state must consider the income and

resources of everyone in the AFDC assistance unit. (*Ibid.*) Notwithstanding these concessions, respondents contend the state is without authority to compose the assistance unit in the manner provided for by the non-sibling assistance unit rule. Respondents' contention is premised on an erroneous understanding of the AFDC laws.

In *Beaton* and *Edwards* the Ninth Circuit held the non-sibling filing unit rule invalid because it wrongfully imputes income from individuals who have no legal obligation of support. In their opposition respondents maintain that a general rule in AFDC provides that "income may not be imputed based upon the presence of a person in the home, unless that person has a legal duty to support the AFDC family." (Opp. 5, n.3.) However, this Court, as well as the Court of Appeals, has held that it is not unlawful to compose the assistance unit in a manner which results in imputing income from a person who has no legal obligation of support, where such person is also a member of the assistance unit. *Bowen v. Gilliard*, 483 U.S. 587, 593, n.5 (1987); *Gorrie v. Bowen*, 809 F.2d 508, 515-516 (8th Cir. 1987); *Bradley v. Austin*, 841 F.2d 1288, 1294-1295 (6th Cir. 1988); *Oliver v. Ledbetter*, 821 F.2d 1507, 1512-1513 (11th Cir. 1987).

Clearly, *Beaton* and *Edwards* conflict with this Court's ruling in *Gilliard*. The Ninth Circuit decision in this case and in *Beaton* are contrary to the laws governing the AFDC program and should be reversed.

III

THE NINTH CIRCUIT ERRONEOUSLY CONSTRUED THE FEDERAL REGULATIONS GOVERNING THE AFDC PROGRAM TO INVALIDATE CALIFORNIA'S NON-SIBLING FILING UNIT RULE

In their opposition, respondents contend that the Petition for Writ of Certiorari should be denied as the Ninth Circuit correctly interpreted the federal regulations and properly invalidated California's non-sibling filing unit rule. (Opp. 9.) However, the federal regulations, their regulatory history, and Department of Health and Human Services policy interpretations do not support the Ninth Circuit's decision that the non-sibling filing unit rule violates federal law.

Respondents allege that the regulations at issue here prohibit attribution of income from *any* non-legally responsible individuals. (Opp. 11.) To the contrary, the regulations relied upon by respondents and the Ninth Circuit, 45 C.F.R. §§ 233.90(a)(1), 233.20(a)(2)(viii), and 233.20(a)(3)(ii)(D) do not apply and, were not intended to apply to circumstances where the non-legally responsible relative is also a member of the assistance unit.[1] A review

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[1] According to respondents, the only occasion when it is proper to deem income or resources available from a non-legally responsible person is from some step-parents, alien sponsors, grandparents, and in approved shared living situations. (Opp. 6, n.3.) However, based on respondents' interpretation of the regulations, respondents would apparently preclude categorical AFDC eligibility to nearly all of the relatives listed at 42 U.S.C. § 606(a) including aunts, uncles, first cousins, brothers, sisters, nieces or nephews. Such an interpretation is certainly contrary to the express provisions of the laws governing the AFDC program.

of the regulatory history and the decisional law[2] giving impetus to the adoption of the regulations clearly indicate that the regulations do not, and were not intended to, apply to situations involving the application of the non-sibling filing unit rule.

Moreover, the federal courts have overwhelmingly rejected the argument that a child must first be determined needy before that child is placed into the family filing unit. *Skidgel v. Maine Dept. of Human Services*, 994 F.2d 930, 938 (1st Cir. 1993). In invalidating California's rule governing assistance or filing unit composition, the Ninth Circuit did exactly what the *Skidgel* Court rejected: it erroneously applied the rules governing availability of income to the rules governing the composition of the assistance unit. The regulations governing availability of income were simply not intended to apply to the non-sibling filing unit rule.

Respondents urge the Court to give no consideration to the 1994 Department of Health and Human Services memorandum, HHS Action Transmittal ACF AT-94-6, submitted in support of the Petition for Writ Of Certiorari. Respondents claim that the memorandum should be disregarded because it fails to comply with the requirements of the Administrative Procedure Act (APA), and because it is a response to ongoing litigation. (Opp. 15.)[3]

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[2] *King v. Smith*, 392 U.S. 309 (1968); *Lewis v. Martin*, 397 U.S. 552 (1970); *Van Lare v. Hurley*, 421 U.S. 338 (1975).

[3] Respondents also urge the Court to disregard petitioners' reliance on the discussion in *Bray* which indicates that federal administrative agency support for the non-sibling filing unit rule goes as far back as October 1976. (*Bray v. Dowling*, 25 F.3d

Respondents' claim that the Action Transmittal AT-94-6 is a response to ongoing litigation is premised on the allegation that the memo was prepared under the direction of Mary Jo Bane, a former defendant in the *Bray* litigation. However, as noted by the Court in *Bray*, there is no indication of any extraordinary role of Ms. Bane in that litigation. *Bray v. Dowling*, 25 F.3d 135 (2d Cir. 1994) Slip Op. n.11. Moreover, Ms. Bane is not a defendant or a party in this action. Accordingly, respondents' claim that the action transmittal is a response to ongoing litigation should be rejected.

Similarly, the Court should also reject respondents' claim that Action Transmittal 94-6 constitutes a significant change in past policy pronouncements and thus violates the APA. There has been no change in the long-standing federal policy, dating back to October 1976, of unequivocal support for the validity of non-sibling filing unit rules. *Bray v. Dowling* 25 F.3d 135 (2d Cir. 1994) Slip Op. 16:3-14,19:3-4. Rather than give no consideration to the federal agency opinion, as respondents argue, this Court should give great weight and deference to the policy interpretations of the federal agency charged with administration of the AFDC program. *Chevron, USA, Inc. v. NRDC*, 469 U.S. 837, 844 (1984).

In the petition petitioners showed that the Ninth Circuit's decisions in *Edwards* and *Beaton* lead to serious inequities because in the absence of California's non-sibling filing unit rule, monthly AFDC payments for four

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135 (2d Cir. 1994), Slip Op. 16:3-11.) While such agency pronouncements are not dispositive, they constitute authoritative policy which is entitled to great deference. *Chevron, USA, Inc. v. NRDC*, 469 U.S. 837, 844 (1984).

needy individuals residing in the same household can range from $788 to $1304. Unable to dispute the truth of petitioners' arguments, respondents attempt to obfuscate the issue by comparing two different AFDC populations and urge they are not treated equally under the AFDC program. Accordingly, respondents compare a rich, non-needy care taker relative household with a poor, AFDC-dependent caretaker relative household, which both shelter a needy non-sibling. Respondents indicate the AFDC rules treat these two disparate families differently. Respondents' comparison of disparate groups is not a fair or accurate comparison to determine whether similarly situated households are treated equally and equitably under the non-sibling filing unit rule.

In support of their claim of inequity respondents suggest that where a needy non-sibling is offered shelter by a needy aunt with two children of her own, the non-sibling will receive $116 in benefits. (Opp. 16.) Respondents, unfortunately, misrepresent the facts to this Court in order to support their claim of inequity. In fact, where a needy non-sibling moves in with her aunt and two cousins the entire, four-person assistance unit will receive a monthly benefit of $723, which averages out to **$180.75** per person, and **not $116** as respondents represent.

Respondents concede that the caretaker relative has the obligation to use the child's AFDC benefits in the child's best interests. (Opp. 19.) However, to apportion merely $116 as respondents suggest rather than $180 would indeed constitute a breach of that obligation, a misuse of the AFDC benefits, and subject the caretaker relative to possible sanctions. The Court should reject respondents' contention and analysis. The non-sibling

filing unit rule fosters equity among similarly situated assistance units.

Lastly, in support of the Ninth Circuit's decisions in *Beaton* and in *Edwards*, respondents contend that the *Bray* and *MacInnes* decisions are "seriously flawed." (Opp. 18.) In reaching that conclusion respondents allege the decisions are contrary to 45 C.F.R. § 233.90(a)(1). Respondents, however, misstate the language of the regulation. The reference in the regulation to a person who is "legally obligated to the [needy] child under State law of general applicability" is not to any general prohibition against deeming of income as respondents suggest. Rather, the reference is directed to the state's determination whether or not deprivation exists in situations involving the presence of a step-parent.

Respondents also contend *Bray* and *MacInnes* are flawed, arguing that the "federal policy has long recognized the right of the caretaker relative to choose who is included and who is excluded from the assistance unit. . . . " (Opp. 19.) However, respondents should know very well that such is not the current federal policy and has not been so since the 1984 enactment of the mandatory family filing unit rule, 42 U.S.C. § 602(a)(38). *Bowen v. Gilliard*, 483 U.S. 587, 593-594 (1987). Moreover, respondents concede that the state has the discretionary authority to compose the assistance unit in any manner not expressly prohibited. As recognized in *Bray* and *MacInnes*, the compositional non-sibling filing unit rule is not contrary to the federal laws governing the AFDC program. Rather, it is the Ninth Circuit's decision in this case and in *Beaton* that poses a direct obstacle to allowing states to achieve the important objectives embodied in the

congressionally mandated change in focus of the AFDC program. *Gorrie v. Bowen*, 809 F.2d 508, 515 (8th Cir. 1987).

CONCLUSION

The decision of the Ninth Circuit in this case and in *Beaton* are expressly contrary to the well recognized provision that attribution of income between individuals who must be included in the same assistance unit does not violate the principle of income availability in the AFDC program, even where a legal obligation of support is absent. The decision in this case and in *Beaton* wrongfully limit the states' power to compose the AFDC assistance unit whereas *Bray* and *MacInnes* reach the correct conclusion. For the reasons stated herein the Court should grant the Petition for Writ of Certiorari.

DATED: August 5, 1994

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